mary judgment under O.14 will not be granted if there is a triable issue to go to trial. This is so even if the merit of the defence case is not apparent from the defence filed or from the affidavit showing cause. Here it has clearly been shown that there is doubt as to the *bona fides* of the defence case and it was, therefore, only right or just that the defendant be asked to furnish security. That is to say, leave to defend should have been conditional. We say nothing of the matters raised in the pleadings but we are of the view that in the circumstances of this particular case the Assistant Registrar erred in not making the order conditional.

Accordingly, we allowed this appeal with costs and directed that leave to defend granted is conditional on the respondent depositing the amount claimed into court within one month.

Appeal allowed.

Solicitors: *Lim Kean Chye & Co.; H. L. Teoh & Co.*

AHMAD BIN ISHAK v. PUBLIC PROSECUTOR

[A.Cr.J. (Arulanandom J.) February 22, 1974]
[Kuantan — Criminal Appeal No. 9 of 1973]

Penal Code, s. 414 — Stolen property — Cheque — Presumption from possession of stolen property — Evidence Act, s. 114.

The appellant, a penghulu, was convicted on the charge that he voluntarily assisted in disposing of a cheque valued at $2,000.90 which he knew or had reason to believe to be stolen property thereby committing an offence punishable under the Penal Code. The cheque had been handed to the appellant by an office boy. It was a government cheque, crossed, and had been made out in the name of another person. The appellant had taken the cheque to a goldsmith's shop and had purchased gold ornaments and had taken the balance in cash. He was sentenced by the lower court to twelve months imprisonment. On appeal by the appellant against conviction and sentence.

Held: (1) there was no doubt that the cheque was stolen;

(2) the accused knew that the person from whom he had obtained the cheque was a mere office boy and that the sum made out thereon was considerable;

(3) there was sufficient cause for the accused to have reason to believe that the cheque was stolen and the conduct of the accused tended to show that the cheque was stolen;

(4) the presumption under section 114 of the Evidence Act was correctly applied.

Observations on the sentencing of an offending Government servant.

Case referred to:-

(1) *Mavji Nanji* v. *Emperor* A.I.R. 1941 Bom. 325, 326.

CRIMINAL APPEAL.

K. Chandra for the appellant.

Lamin bin Hj. Mohamed Yunus (Deputy Public Prosecutor) for the respondent.

Arulanandom J.: This is an appeal from the decision of the learned magistrate, Kuantan, on the 24th May, 1973, wherein the appellant was convicted on the charge that he at Tai Kong Gold Smith, No. 72, Main Street, Kuantan, in the District of Kuantan, in the State of Pahang, voluntarily assisted in disposing of property, to wit, one cheque No. 58766 valued at $2,000.90, which he knew or had reason to believe to be stolen property, and whereby he committed an offence punishable under section 414 of the Penal Code, and was sentenced to twelve months' imprisonment.

The appellant has in his grounds of appeal enumerated six grounds but this has been summarised by counsel for the appellant in his arguments. First and foremost, it cannot be denied that cheque No. 58766 valued at $2,000.90 was stolen. You have the evidence of PW1 Abdul Hamid bin Hussain that the cheque should have rightly been paid to him but that he did not receive it. Again, PW3 states in his evidence that he made out the cheque and passed it to the despatch clerk together with the vouchers and other documents. The despatch clerk (PW4) put the cheque in an envelope and wrote the address on the envelope for despatch but did not gum it. The normal procedure in the office was for the cheques to be handed in that form to the office boy whose duty it was to seal the envelope and then send it to the post office for mailing. The fact that Abdul Hamid did not get it could only mean that either it was stolen or that it was lost in the post. If it was lost in the post, then, either it would have gone to the Dead Letter Office and returned to the Treasury or would have disappeared for good and not reappeared in anybody else's possession. Since it did not disappear completely and since it was not returned to the Dead Letter Office the only conclusion which one could arrive at is that at some stage after the despatch clerk put it in the envelope, addressed it, did not seal it and gave to the office boy, it was stolen. It is not necessary to decide now at which stage it was stolen but defence counsel seems to agree that the cheque was stolen because he put several times to PW5 that he was the one who stole the cheque. So now as I see it there is no doubt from the evidence of the prosecution that this cheque was stolen.

The next bit of evidence is that the accused cashed the cheque by purchasing some jewellery and receiving the balance of the amount of the cheque in cash. Now counsel for the appellant has argued that since there was a lapse of about 7 or 8 days between issue of the cheque and encashment by the accused the period of time was too long for the presumption under section 114 of the Evidence Ordinance to be invoked. But, even if one looks at the authority which counsel for the appellant cited, the case of *Mavji Nanji* v. *Emperor*[1] Lord Beaumont C.J. on the question of period of time before the presumption in section 114 can be invoked says:

"The court is not bound to draw this presumption, and the court must always ask itself whether in the circumstances of the particular case the presumption is one which in fairness to the accused can be drawn. When one is dealing with property of some value, and it is very unlikely that the man, from whom the accused got it, had come by it honestly; or when one is dealing with property stolen in a village where there are not likely to be many dealings in it, the presumption may be drawn more readily than in the case of a theft in a city like Bombay,..."

Now in this case this was a cheque which was given for $2,000.90. It was a large amount and the person (an office boy) who gave it to the accused is not likely to have come by it. Therefore, in my view, the presumption was correctly invoked under section 114 because the accused was in possession of a government cheque and he cashed it soon after it was given and he received consideration and it was a stolen

cheque and therefore it was open to the court to invoke the presumption under section 114 and after that it would have been open to the accused to rebut the presumption.

Now the counsel for the appellant has also argued at length that the circumstances were such that the accused could not have had reason to believe or the knowledge necessary to warrant a conviction. "Reason to believe" is defined in section 26 of the Penal Code. It says:

"A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing, but not otherwise."

Now, "reason to believe", knowledge, intention, are things in a man's mind and you cannot see it, you cannot hear it. Nobody who receives stolen goods carries a big banner saying that these are stolen goods. Nor does he shout from the roof tops. You must look into the circumstances and consider if the circumstances are such that any reasonable man could see sufficient cause to believe that it was stolen. Firstly, it was a government cheque made out in the name of a person who was not the person handling the cheque. It was made out in the name of Abdul Hamid bin Hussain and it was a crossed cheque. Secondly, the endorsement of the payee on the cheque was not made in the presence of the accused. The learned counsel argued that crossed cheques do change hands very often. As a general statement I agree a businessman who has to deal with transactions involving money may have occasion to handle crossed cheques but not an office boy. In this case it had been passed from an office boy to a Penghulu to the tune of $2,000.90 when the cheque is made out in the name of another person. Thirdly, the cheque was in the hands of the office boy working in a government department who should not normally be in possession of these cheques. The accused knew that the person from whom he got the cheque was a mere office boy and working in a government department. This was a government cheque. Fourthly, the amount of the cheque from the point of view of the office boy was considerable and it is not usual for people to entrust such cheques with office boys for encashment. Fifthly, there was no reason advanced by the office boy as to why the payee himself could not cash it. Sixthly, the office boy did not want to cash it himself. Seventhly, the office boy's reason for not cashing the cheque himself was that he owed the goldsmith money. Firstly, this was not supported by the goldsmith, and secondly, this is again incredible because from the accused's own evidence the office boy was supposed to have owed him $600. Eighthly, the purported explanation of the office boy that he had interest in logging concessions could hardly have been taken seriously. If he had timber concessions or any interest in logging concessions he would not be an office boy and an office boy is not one likely to have interest in logging concessions. So even without invoking the presumption there was sufficient cause for the accused to have reason to believe that the cheque was stolen. Furthermore, the accused's conduct itself when he got the cheque and went to the goldsmith's shop would tend to show that he knew the cheque was stolen. This is what he told the goldsmith. He forgot to bring his identity card and hence did not leave his name and identity card number with the goldsmith.

The learned magistrate has made findings of fact that the accused knew or had reason to believe that the cheque he had was stolen. Then after cashing the cheque he kept the jewellery purchased for himself. Whether this was consideration for cashing the cheque or not I am not prepared to say. But his story that he was owed $600 and he received gold to the value of $499 does not ring true. Because if he was owed $600 which again was not supported by any document, he would have retained $100 before giving the remainder of the cash to the office boy. On page 33 of the grounds of judgment the learned magistrate says, referring to the accused: —

"A man of some standing in society, a penghulu, is an acquaintance of an office boy. And this office boy stands above all others in his profession. He indulges in money making industry — logging. And this man — the accused — without raising an eye-brow believed him.

To add flavour to the transaction the cheque was handed to him as payment of a six hundred dollar debt. The cheque (P.7) was cashed at a goldsmith by buying certain gold ornament. Accused keeps the gold, the balance in cash was handed back to Adnan. For reasons best known to him (accused) he is satisfied in keeping the gold a hundred dollars less than what was then due.

And before cashing the cheque, accused explained to the goldsmith that he had forgotten to bring his identity card along.

. . . .

This so called repayment of debt shows that the debt does not exist at all. The cheque was illegally obtained, handed to accused for cashing and in consideration of his part in this illegal transaction he was paid five hundred dollars.

The court accordingly convict the accused and sentence him to twelve months imprisonment."

I can find no reason for my interfering with the learned magistrate's findings of fact with all of which I agree nor can I find any just reason for interfering with his conviction.

Now we come to the question of sentence. The learned counsel for the appellant has argued before me that the sentence is harsh, that the penghulu is a first offender and has a family to support. The accused himself has admitted that he is a penghulu. Now a penghulu is charged with some responsibility among the lower echelons of society and is expected to show leadership in the discharge of his duty, his conduct and his respect for law. He is a government servant. In this period of our country's progress the Government is geared to ambitious schemes to raise the standard of living of its citizens to give them a greater share of the wealth of the country and to achieve a just and equitable society. To achieve its purposes to fulfil its objectives the Government must rely upon its own officers and its own men and it has a right to expect from them integrity, diligence, industry and loyalty. For a government servant to flagrantly flout the law, to assist in defrauding the Government and to deprive the persons genuinely working to reap the fruits of their work forfeits his right to leniency. It may be that if I was hearing this case in the first instance I may or may not have given the same sentence but I find it exceedingly difficult to agree that it is manifestly excessive. It is only if I find it manifestly excessive that I have a right to interfere. Therefore I dismiss the appeal against conviction and sentence.

Appeal dismissed.